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MAILED
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OFFICE OF PETITIONS

In re Application of :
Babish, et al. : DECISION ON PETITION
Application No. 10/590,424 :
Filed: April 2, 2007 :
Atty. Dkt. No.: 068911-0160 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 and the alternative petition to revive under 37 CFR 1.137(b), filed October 7, 2011.

The application became abandoned September 3, 2011 for failure to timely submit a proper reply in response to the Notice of Allowability mailed June 2, 2011. The Notice of Allowability set a three month statutory period of time for reply. Notice of Abandonment was mailed September 19, 2011.

DECISION UNDER 37 CFR 1.181

Petitioner's arguments have been carefully reviewed, but have not been found convincing. Applicants argue that in view of the mailing of the Supplemental Notice of Allowability on July 27, 2011, corrected drawings were not required. Applicants further assert that to the extent corrected drawings were required, the failure to submit the corrected drawings was a result of the Office's failure to note the drawing requirement in the Supplemental Notice of Allowability mailed July 27, 2011.

Despite the mailing of a Supplemental Notice of Allowability on July 27, 2011, the Notice of Allowability mailed June 2, 2011 was not withdrawn, vacated, or expunged from the record. Accordingly, the failure to timely submit a proper reply to the Notice of Allowability mailed June 2, 2011 resulted in the abandonment of the application. Failure by applicant of a patent application to reply within the time period provided under § 1.134 and § 1.136 results in abandonment of the application as a matter of law. See, 37 CFR 1.135(a). Absent a showing that a proper reply to the Notice of Allowability mailed June 2, 2011 was timely filed within the time period for reply set forth therein, the holding of abandonment will not be withdrawn.

Accordingly, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

DECISION UNDER 37 CFR 1.137(b)

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

As to requirement (1), receipt is acknowledged of the replacement drawing sheet. As to item (2), the required petition fee has been charged to the authorized deposit account. As to item (3), a proper statement of unintentional delay has been provided. Item (4) is not applicable to the instant application.

After careful review, the instant petition has been found in compliance with the requirements set under 37 CFR 1.137(b).

In view thereof, the petition under 37 CFR 1.137(b) is hereby **GRANTED**.

Accordingly, the instant petition is being forwarded to the Office of Data Management for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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